IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

***

Raghbir Singh Bal Versus Ravinder Kumar Bakshi and others.

***

Before: Hon'ble Mr. Justice R.S.Madan.

***

Present:- Shri A.P.S.Randhawa, Advocate, for the petitioner.

Mrs. Ravinder Kaur Nihalsinghwala, Deputy Advocate General, Punjab.

Shri Pankaj Bhardwaj, Advocate, for respondent No.3.

***

R.S.Madan, J

By filing the instant revision petition under Section 482 of the Code of Criminal Procedure, the petitioner has assailed the correctness and legality of the order dated 20.03.2003 passed by the learned Sessions Judge, Amritsar in the Revision Petition titled as Balbir Singh Inspector etc. Versus Raghbir Singh Bal, whereby the order dated 12.01.2001 passed by the learned Chief Judicial Magistrate, Amritsar was reversed.

In brief the facts of the case are that a complaint under Sections 323/308/325/355/506/331/341/342 read with Section 34 of the Indian Penal Code was filed by Shri Raghbir Singh Bal against Shri Sukhdial Singh Bhullar, DIG, Border Range, Amritsar, Ravinder Kumar Bakshi, Deputy Superintendent of Police and Balbir Singh, Inspector, SHO Police Station Civil Lines, Amritsar on the broad allegations that the the complainant was posted as second in Command, 45 Bn. C.R.P.F., at Sikkim and at present was acting as Coach in NIS Patiala. His real brother S.S.Bal was also posted as Second-in-Command, 99 Bn. R.A.F., C.R.P.F., at Hyderabad. That the complainant was sent to act as an observer for the All India Inter University Athletics Meet schedule to be held at Amritsar from 29.12.1997 onwards by the Secretary namely Shri Lalit K.Bhanot of

Amateur Athletic Federation of India. It is alleged that the brother of the complainant, after obtaining leave had come to reside with him at Bungalow No. 2090, Ranjit Avenue “C” Block Amritsar which was their parental home. That on the night intervening 31.12.1997/1.1.1998 at about 12.15 AM the complainant and his brother S.S.Bal had gone to purchase some sweets from Novelty Sweet Shop situated at Lawrence Road, Amritsar in connection with New Year celebration in their Maruti Car, which was being driven by their relation Lakhwinder Singh son of Khazan Singh. That on the way to Novelty Sweet shop, the car in which the complainant and his brother were travelling, was signalled to stop by the police official (whose name was lateron disclosed as Inspector Balbir Singh). The complainant and his brother had disclosed the police regarding their identity and in the meantime, two private cars had passed by their side and had gone towards Novelty Sweet shop. That Ravinder Kumar Bakshi, DSP, had also come there and the complainant and his brother had protested as to why their car was stopped and the other private cars had been allowed to go. That Ravinder Kumar Bakshi, DSP had stated that the other cars were carrying family members of police officials and that the complainant and his brother had started arguing with the DSP stating that discrimination had been done with them, because they were also officers and that a person in civil uniform had then come and had asked Balbir Singh, Inspector, as to what was going on and that the person (whose name was lateron known as Sukhdayal Singh Bhullar, DIG) had started using bad language against the complainant and his brother; that the complainant and his brother had told them that they were respectable citizens and were national players; that DIG Sukhdayal Singh Bhullar, had got infuriated and slapped complainant and his brother Sukhwinder Singh Bal and ordered the accompanying police constables to teach them a lesson; that immediately then Inspector Balbir Singh and DSP Ravinder

Kumar Bakshi and other officials present there, without any fault of the complainant and his brother, had started giving them beatings and Inspector Balbir Singh had given dang blows to them; that their hands and feet were then tied with their turbans and they were made to sit in the police vehicle and were taken to Police Station Civil Lines, Amritsar; that DSP Ravinder Kumar Bakshi and Inspector Balbir Singh had come with them in the police station, whereas, Sukhdayal Singh Bhullar, DIG had followed them; that after going to the police station, Sukhdayal Singh Bhullar had abused them and when Sukhwinder Singh Bal, brother of the complainant had told him that they will take up the matter with the high official, he (Sukhdayal Singh Bhullar) had again taken a danda and had given dang blows to the complainant and his brother Sukhwinder Singh Bal. Inspector Balbir Singh and Ravinder Kumar Bakshi, DSP had caught hold of them from their long hair and their arms were tied with their turbans and then they were put under hand cuffs; that Sukhdayal Singh Bhullar had wanted and directed them to sign on blank papers, to which the complainant and his brother had refused and Sukhdayal Singh Bhullar had given dang blows to Sukhwinder Singh Bal with full force which had landed on his head and left arm and the left arm of Sukhwinder Singh Bal was fractured and he was caught hold of from his long hair by Inspector Balbir Singh and was given kick blows . He fell down on the ground and then Sukhwinder Singh Bal was made to lie with back upward and Balbir Singh Inspector and Ravinder Kumar Bakshi, DSP had given multiple dang blows on his buttocks and he had become, almost, semi un-conscious. Even then Sukhdayal Singh Bhullar had given him kick blows. It was then alleged that lateron a man with mulla-cut beard had come to the police station (lateron he was identified as a doctor), that when the condition of Sukhwinder Singh Bal and complainant was deteriorated, they were sent to Civil hospital and were medically examined by the doctor there. It was further averred that

the doctor, who had medically examined the complainant and his brother in Civil Hospital, Amritsar, was in-connivance with the police and he did not admit them for treatment and he had handed over the complainant and his brother again to the police and the doctor, had intentionally shown less injuries on their person. It was then alleged that in order to escape their mis-deeds, the police had registered a false FIR bearing No. 1/1998, under Section 332 etc. of IPC against the complainant and his brother; that the complainant and his brother were admitted in the hospital under orders and directions of the court. When they were produced before the Duty Magistrate at his residence for procuring their police remand; that brother of the complainant was still lying in the hospital,. It was said that in the earlier medical examination, full injuries on the person of the complainant and his brother were not given by the doctor and they were accordingly re-examined by a board of doctors of Forensic Department of Medical College, Amritsar under the orders and directions of the Court. The whole incident, as per the version of the complainant, was said to have been seen by Lakhwinder Singh son of Khazan Singh, resident of 99, Ambika Colony, Jalandhar. It was alleged that father of the complainant Shri Chanan Singh had given fax message to high C.R.P.F. officials and Smt. Sukhraj Kaur wife of the complainant had sent telegrams to the President of India, New Delhi, National Human Rights Commission, New Delhi; Center Sports Minister, New Delhi; Home Minister, Government of India, New Delhi and other authorities. It was also averred in Para No. 8 of the complaint that no sanction under Section 197 Cr.P.C. was required as per the ruling of the Hon'ble Supreme Court of India because it was not the duty of the police to give injuries to the respectable citizens without any reason. It was then mentioned in the complaint that the complainant was given Arjuna Award and Maharaja Ranjit Singh Award being the distinguished athletes of India and the accused had committed the offence detailed in the complaint.

In the preliminary evidence, the complainant besides himself appearing in the witness box as PW-1, examined nine witnesses including doctors, in support of his case against the accused.

The learned trial court after hearing the learned counsel for the complainant and perusing the evidence and the documents brought on the record, summoned the accused to face prosecution under Sections 323/325/506 read with Section 34 of the Indian Penal Code, vide order dated 18.03.1998.

After the appearance of the accused, an application under Section 197 Cr.P.C., was filed by Balbir Singh, Inspector, for their discharge as no sanction was obtained before the initiation of the criminal proceedings against them.

The learned Chief Judicial Magistrate, Amritsar, after hearing the respective submissions of the learned counsel for the parties, dismissed the application vide order dated 12.01.2001. It was against that order that the revision petition was filed before the learned Sessions Judge, Amritsar, who vide his order dated March 20, 2003 accepted the revision by holding that the order passed by the learned trial court was perverse and illegal, which has been challenged before this Court.

According to the case of the prosecution FIR in the instant case was registered on 1.1.1998 at 3 A.M. The complaint against the accused was filed in the Court on 13.11.1998 by Raghbir Singh Bal. According to the facts appearing in the case, the occurrence in question is not disputed by the complainant and the case set up in the FIR. Both the parties are levelling allegations against each other for the episode. It is alleged that the complainant were in drunken condition at the relevant time as is evident from the medical reports (Annexures R1 to R-5), attached with the reply filed by Sukhdial Singh Bhullar, IPS (Retired).

Admittedly, the complainant and his brother, were examined

by the doctors at 3.15 AM, whereas the present occurrence had taken place around 12.20 AM on 1.1.1998. Both of them were emitting smell of alcohol and as per the report of the Chemical Examiner, alcohol was detected in the contents of exhibits No. I and II and blood alcohol concentration was estimated as 40.25 mgs as per 100 ml. of blood.

It is not disputed that the complainant R.S.Bal and his brother S.S.Bal were heavily drunked as they were returning after the celebration of New Year on 31.12.1997. According to the case set up in the FIR by the police Shri R.S.Bal and his brother S.S.Bal tried to hit the police officials on duty. They gave them beating to the extent that the turban of ASI fell on the ground. When the Deputy Superintendent of Police approached the complainant and his brother they even hit him. It was in these circumstances that the police while on duty to maintain law and order, was under the pressure to hit the complainant R.S.Bal and his brother S.S.Bal.

It is also the case of the prosecution-respondents herein, that the complainant and his brother were got examined by the police and lateron under the orders of the trial court by the board of doctors and the following injuries were found on the person of the complainant:-

> 1. Brownish black contusion on the lower aspect of the left eye 6x2 cm in size extending upto lateral angle of the left eye. Conjunctiva of left eye was found congested. Corneal reflex was normal. Tenderness was found absent and there was no local rise of temperature.
>
> 2. Brownish black bruise on the outer aspect and front of right upper arm 12x11.5 cms in size 15.5 cms below the tip of shoulder. Local temperature was normal. Movements and tenderness were normal. Greenish discolouration was present around the borders of bruise.
>
> 3. Patient complained of pain in the retrosternal area left gulteal region and right parietal region. No external injury was visible.

The following injuries were found on the person of Shri S.S.Bal, brother of the complainant:-

1. POP cast was present in the left half of upper arm and forearm extending upto fingers of hand and thumb. After removing the POP cast, a diffuse swelling was present on the lower 1/3rd of left forearm, 12 cm above wrist. Movements were painful and restricted at wrist and elbow joint. Local temperature was raised. Advised X-ray.

2. Diffused swelling 6x4 cms was present at the back of left hand, 7 cms distal to wrist joint, a brownish black coloured scab size .5x.3 cm was present in the center of swelling over the hand. Movements of all the fingers and thumb were restricted. Tenderness was present and local temperature was raised.

3. Partially healed horizontal placed lacerated wound 5.5 x .5 cm on front of left side of forehead 2 cm above, upper border of left eye brow. Marks of old stitches were present. Serious fluid was coming out of it. Advised X-ray.

4. Brownish blackish abrasion 4 x 1.5 cm was present on the left side of fronto prietal region of head. 6 cm above injury No.3. Scap present at places and it was vertically placed.

5. Black coloured abrasion 4 x 2 cms in size obliquely placed present on left side of forehead 3 cms above injury No.3. Scap was present at places.

6. Black coloured abrasion 3 x 1cm with scalp formation was present on back of head 7 cms above posterior hair line horizontally placed on the right occipital region 5 cms away from protuberance.

7. Lacerated wound 4 x 7 cm in size horizontally placed and partially healed was present on left side of head in the parietal temporal region 12 cms above mastoid.

8. Brownish black colour was present around left eye patient complained of blurring of region and double region. Advised eye surgeon opinion.

9. Brownish black coloured bruise 16 x 21 cms on back of right buttock in the gluitial region.

10. Brownish black colour contusion on the back and outer aspect of right thigh 16 x 4 cms and 12x1.5 cm Y shaped and 36 cms below anterior/superior iliac spine.

11. Brownish black coloured contusion 14 x 22 cm on back of left buttock 7 cms below anterior/superior iliac spine over the abdomen and scab was present at spine.

12. Brownish black abrasion 2.5 cm x 0.7 cm on

> outer aspect of left aliac region 7 cm above anterior/superior iliac spine over the abdomen and scab was present at place.
>
> 13. Blackish black contusion was present on right upper arm on its outer aspect 3 cm lateral to injury No.13. Patient complained of pain at back of both shoulders and chest.

The learned counsel for the complainant contended that the injuries on the person of the complainant and on the person of brother of the complainant show that they were given beating at the hands of the accused mercilessly and cannot be said to be self inflicted. He further contended that there is no evidence on the record from the side of prosecution that the accused-respondents received any injuries on their person at the hands of the complainant or his brother. Had there been any resistance or truth in the sequence of events as alleged by the prosecution in the police case, the police officials must have received injuries at the hands of the complainant, whereas the injuries which the complainant and his brother had received at the hands of the accused, which have been fully described above, speaks of the volume of thrashing suffered at the hands of the accused persons. It is also not disputed that the occurrence took place at 12.30 AM. The complainant and his brother, was immediately taken to the police station and the first information report was lodged against the complainant at 3 AM.

The crucial question which requires determination is whether for the act and conduct of the accused who are the police officials and as alleged were on duty and acted in the manner to maintain the law and order, were within their jurisdiction to cross the border line and permission to sue them for their mis-deed, was necessary as provided in Section 197 of the Code of Criminal Procedure.

The learned counsel for the petitioners contended that even if it is admitted for the sake of arguments that the petitioner and his brother

under the influence of liquor at the relevant time, manhandled with the police official and caused injuries while they were on duty, the law did not permit the accused to act in an inhuman manner and cause injuries to the complainant and his brother and then permit them to raise the question of sanction to sue them.

Before taking shelter of the provisions of Section 197 Cr.P.C. It is the well settled principle of law that before the question of sanction can be invoked two conditions are to be satisfied-

> 1) the accused must be a public servant of the kind mentioned in the Section i.1. He must be a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the State Government or Central Government; and
>
> 2) the offence must be committed by the accused while acting or purporting to act in the discharge of his official duty.

Admittedly, the accused are public servants and can be removed from their office/posts by the State Government. The question whether the alleged offence is committed in the discharge of official duty, cannot be decided only with reference to the place of incident. As per the averments made in the complainant as well as the case set up by the police officials in the FIR, the incident had taken place on 31.12.1997 at about 12.30 AM on the roadside, within the territorial jurisdiction of the Police Station. It is also the case of the complainant that all the police officers, on receipt of message from the police station, reached at the place of occurrence and then they took the complainant and his brother to the police station and gave them beatings with danda resulting in the injuries.

A bare reading of Section 197 of the Cr.P.C., postulates that an act which is done by a public officer in his official capacity but which, at the same time, is neither his duty nor his right as such public officer to do as in that case he would not be committing an offence at all and there

would be no question of prosecuting him or obtaining sanction for such prosecution. If Section 197 Cr.P.C. is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. Thus, it can be safely observed that assault on the complainant during the wee hours and that too on the roadside and in the police station by a public servant, under the garb that he is on official duty, is not a part of official duty.

In this view I am fortified from the decision of this Court reported as Jagidsh Chander and others Versus Kirat Singh- 1984 Crl.L.J. NOC 89 (Punjab and Haryana), wherein this Court has observed as under:-

> ***"the police officials called the complainant to the Police Station and hand-cuffed him and removed his wrist watch and other articles from the person and also gave him beating which cannot even remotely be said to be connected with the discharge of official duty, in such circumstances Section 197 Cr.P.C. would not be attracted in respect of complaint filed by the complainant against the petitioners as there was no nexus between the official duties assigned to the petitioners and the alleged acts purported to have been done by them".***

The legislative mandate enumerated in sub-section (1) of Section 197 debarring a Court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant *is not removable from his office* save by or with the sanction of the government touches the jurisdiction of the Court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the Court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the Court to rectify its error where jurisdiction has been

exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 of the Code has any application in the case in hand.

From the bare perusal of the injuries which have been described in the preceding paragraphs itself speaks of the volume of the gravity of the offence, committed by the accused. No doubt, the police is under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense and purposeful to make the investigation effective. By using third-degree method and torturing a person, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. None of the society in the word can permit it. In other words, transparency of action and accountability perhaps are two possible safeguards to check the abuse of police power. As a preventive measures, the **Hon'ble Supreme Court in D.K.Basu Versus State of West Bengal, (1997) 1 Supreme Court Cases 416**, with regard to the arrest or detention of the accused persons, till legal provisions are made, issued the following guide-lines:-

1. ***The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name, tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register;***

2. ***that the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of***

the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest;

3. ***A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the arresting witness of the memo of arrest is himself such a friend or a relative of the arrestee;***

4. ***the time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest;***

5. ***the person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained;***

6. ***an entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is;***

7. ***the arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee;***

8. ***the arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well;***

9. ***Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record;***

10. ***the arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation;***

11.A police control room should be provided at all district and State headquarters, where information regarding the arrest and, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

The Hon'ble Supreme Court further observed in the case (supra) that failure to comply with the requirements hereinabove mentioned shall aprt from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in the High Court having the territorial jurisdiction over the matter.

These requirements are in addition to the constitution and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

In the case in hand, from the appraisal of evidence and documents placed on the record; particularly the injuries suffered by the complainant and his brother at the hands of the police officials, cannot by any stretch of imagination, be termed to have been caused during the discharge of their official duties but speaks of the volume. Thus, it is manifest that in this case all the instructions which have been issued by the Apex Court, have not only been violated but shows the contemptuous and inhuman touch of the police officials.

The precious right guaranteed by Article 21 cannot be denied even to convicts, undertrial, detenus and other prisoners in custody, except according to the procedure established by law. It cannot be said that a citizen “sheds off” his fundamental right to life the moment a policeman arrests him. Nor can it be said that the right to life of a citizen can be put in “abeyance” on his arrest. The inhuman act or any form of torture would fall

within the inhibition of Article 21 or the Constitution of India. If the police officials who are the custodian to maintain the law and order in the country become the law breakers, it would amount to breed contempt and would lead to anarchy.

As a sequel of my above discussion, keeping in view the peculiar facts. circumstances of the case and the extent of the injuries which the complainant and his brother has suffered at the hands of the accused, cannot be said to have been self suffered and the respondents cannot be allowed to take shelter of Section 197 of the Code of Criminal Procedure.

As a result the revision petition is allowed and the order dated 20.03.2003 passed by the learned Sessions Judge, Amritsar is set aside whereas the order dated 12.01.2001 passed by the learned C.J.M. Amritsar, is restored.

March 25, 2008 (R.S.Madan)
Malik Judge